

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.22929 of 1996

Dated: 22.01.2007

Between
Mohd. Ghouse,
S/o. Mohd.Yusufuddin,
Adilabad District.

Petitioner
And

...

1. The Executive Director,
A.P.S.R.T.C., Karimnagar and two others.

Respondents

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THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.22929 of 1996

ORDER:

In this writ petition the petitioner sought for a direction to the respondent-Corporation to consider his past service and to grant all consequential benefits.

The petitioner was appointed as a Conductor in the year 1989 and his services were regularized with effect from 01.07.1990. He was subsequently removed from service by order dated 15.09.1994 on several charges, which read thus:

“1. You have failed to observe the rule ‘Issue and Start’ which constitutes to misconduct under Clause (xxxii) of Reg.28 of APSRTC Employees’ (Conduct) Regs, 1963.

2. You have failed to collect the fare and issue tickets to three passengers who boarded your bus at Busi stage No.13 and alighting without tickets at Bhoker stage No.11 which constitutes to misconduct under Clause (vi)(a) of Reg.28 of APSRTC Employees’ (Conduct) Regs, 1963.

3. You have failed to close the third digit of Rs.3-50 ps. denomination in SR No.A2/1507851 dated 30.01.1994 against the dummy stage in between stages 13 and 11 and 11. Therefore checking officials marked as ‘X’ by the side of two digits i.e., 3 and 5 closed by you which constitutes to misconduct in terms of Clause (xxxii) of Reg.28 of APSRTC Employees’ (Conduct) Regs,

1963.

4. You have torn the SR No.A2/1507851 dt.30.01.1994 and refused to attest the entries made by the checking officials in the relevant column in SR No.A2/1507851 dated 30.01.1994, which constitutes misconduct in terms of Clause (xxxii) of Reg.28 of APSRTC Employees' (Conduct) Regs, 1963.

5. You have refused to attest the statement of the ticketless passengers recorded by the checking officials at the time of check in which the ticketless passengers had recorded that the three of them paid the requisite fare and that you have not given tickets to them and you have torn statement of payment and thrown it away from the bus which constitutes misconduct in terms of Clause (xxxii) of Reg.28 of APSRTC Employees' (Conduct) Regs, 1963.

6. You have failed to co-operate with the checking officials at the time of check and also mis-behaved with the checking officials in an insubordination manner which constitutes misconduct in terms of Clause (viii) of Reg.28 of APSRTC Employees' (Conduct) Regs, 1963."

The petitioner submitted an explanation denying the charges. An enquiry was ordered and on the basis of the report of the Enquiry Officer, a show cause notice was issued by the third respondent proposing to impose the punishment of removal from service and on receipt of the petitioner's explanation thereto, the order of removal was passed on 15.09.1994. The appeal preferred by the

petitioner to the Appellate Authority was rejected on 14.02.1995. The second respondent, in the review petition filed by the petitioner, by order dated 01.06.1995, set aside the order of removal and reinstated the petitioner into service afresh as a casual conductor on daily wage basis, duly fixing his seniority from the date of his actual reporting for duty.

Sri A.K.Jayaprakash Rao, learned counsel for the petitioner, contends that since the second respondent, while giving the petitioner the benefit of doubt, had held that the charges leveled against the petitioner were not proved, he was not justified in denying the petitioner back wages and continuity of service and treating him as freshly appointed conductor. Learned counsel would also submit that, once the charges are held not established, there is no justification in imposing any punishment on the petitioner.

It is necessary to note that among all the charges leveled against the petitioner, the second respondent had given him the benefit of doubt, with regard to charges 1 to 5, to hold him not guilty of the charges. The sixth charge relates to the petitioner's failure to co-operate with the checking officials at the time of check and mis-behaving with the checking officials in an insubordinate manner. The second respondent, in his order dated 01.06.1995, took note of the fact that the petitioner had refused to attest the statement of ticketless passengers, had torn and thrown away the statement, had failed to cooperate with the checking officials and had misbehaved with the checking officials in an insubordinate manner. It is for this charge

that the second respondent had held that the petitioner was not justified in exhibiting an act of non-cooperation towards the TTIs. However, on the ground that it was the first offence by the petitioner during his seven years service, on purely humanitarian and compassionate grounds, he was given an opportunity to serve the organization afresh as a casual conductor on daily wage basis.

It is well settled that the quantum of punishment to be imposed on an employee for proved misconduct is normally for the employer to decide and this Court, under Article 226 of the Constitution of India, would not, ordinarily, interfere with the punishment imposed on an employee for proved misconduct, unless the punishment imposed is one which could not have been imposed at all or is one which shocks the conscience of this Court.

Sri A.K.Jayaprakash Rao, learned counsel for the petitioner, would submit that at least for the purpose of computation of terminal benefits, the petitioner's services should be treated as continuous. He would further contend that, as a result of the order, the entire seven years service rendered by the petitioner had been given a go-by and he had been appointed afresh as a casual conductor in the respondent organization. Learned counsel would also submit that, even if this Court was not inclined to interfere and direct the respondents to grant back wages to the petitioner, the seven years of service rendered by him should be directed to be treated as continuous at least for the purpose of payment of terminal benefits as and when

the petitioner retires from service. Learned counsel would submit that the petitioner has submitted a representation in this regard on 13.07.1995, which is pending before the first respondent. Learned counsel would state that another copy of the representation would be submitted by the petitioner within two weeks from the date of receipt of a copy of this order.

Under the above circumstances, the writ petition is disposed of directing the first respondent to consider the representation of the petitioner and pass appropriate orders thereupon in accordance with law, within a period of three months from the date of receipt of the representation submitted by the petitioner. There shall be no order as to costs.

Date: 22.01.2007
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Ramesh Ranganathan, J